



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 25, 1999

Thomas Atcitty, Treasurer
Democratic Party of New Mexico
5317 Menaul Blvd., NE
Albuquerque, NM 87110

RE: MUR 4752
Democratic Party of New Mexico
Thomas Atcitty, as treasurer

Dear Mr. Atcitty:

On June 8, 1998, the Federal Election Commission notified the Democratic Party of New Mexico and you, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint, the Commission, on March 19, 1999, found that there is reason to believe the Democratic Party of New Mexico and you, as treasurer, violated 2 U.S.C. § 434(a)(4)(A)(i), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). However, the Commission found no reason to believe the Democratic Party of New Mexico and you, as treasurer, violated 2 U.S.C. § 434(a)(4)(A)(ii). The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed toward reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of thirty days, you should respond to this notification as soon as possible.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have questions, please contact Donald E. Campbell, the staff member assigned to this matter, at (202) 694-1650.

Sincerely,



Scott E. Thomas
Chairman

Enclosures:

Factual and Legal Analysis
Designation of Counsel Form
Conciliation Agreement

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Democratic Party of New Mexico
and Thomas Atcitty, treasurer

MUR 4752

This matter was generated by a complaint filed with the Federal Election Commission by John Dendahl, Chairman of the Republican Party of New Mexico. *See* 2 U.S.C. § 437g(a)(1). Complainant alleges that the Democratic Party of New Mexico and Thomas Atcitty, as treasurer ("DPNM"), knowingly and willfully failed to file either a 1998 April Quarterly Report or a 1998 Pre-Primary Report.

The Federal Election Campaign Act of 1971, as amended ("Act"), requires treasurers of political committees, other than authorized committees of a candidate, to file periodic reports of receipts and disbursements. In any calendar year in which a regularly scheduled election is held, all political committees that choose not to file on a monthly basis shall file quarterly reports, which shall be filed no later than the 15th day after the last day of each calendar quarter. 2 U.S.C. § 434(a)(4)(A)(i). Treasurers of such committees shall also file a pre-election report, which shall be filed no later than the 12th day before (or posted by registered or certified mail no later than the 15th day before) any election in which the committee makes a contribution to or expenditure on behalf of a candidate in such election, and which shall be complete as of the 20th day before the election. 2 U.S.C. § 434(a)(4)(A)(ii).

The Democratic Party of New Mexico ("DPNM") is a political committee not authorized by any candidate, and has elected to report on a quarterly basis. The Committee's treasurer is Thomas Atcitty. Complainant alleges that the DPNM "knowingly and willfully failed to file

disclosure reports required by law. . . . Specifically, the DPNM has refused to reveal its 1998 receipts and expenditures in either a first quarter report . . . or a pre-primary report”¹ The DPNM did not respond to the complaint.

Pursuant to 2 U.S.C. § 434(a)(4)(A)(i), the due date for the DPNM’s 1998 April Quarterly Report was April 15, 1998. On March 20, 1998, the DPNM was notified in writing of that deadline. A Non-Filer Notice was sent on May 7, 1998, stating that the DPNM had failed to file the Report and advising it to file immediately. By letter dated May 11, 1998, Thomas Atcitty, the treasurer of the DPNM, responded to the Non-Filer Notice, stating that the DPNM’s bookkeeper had “left at the first of the year,” and that the Report would be sent “in the next few days.” Mr. Atcitty further noted that “[we] thought we filed semi-annually. . . . Obviously, we were in error.” The DPNM filed the Report on June 2, 1998, 48 days late, disclosing receipts totaling \$65,820 and disbursements of \$53,431. The DPNM subsequently amended these figures, listing total receipts of \$72,030 and disbursements of \$83,059.

Complainant asserts that the DPNM’s “claim of innocence and confusion about dates . . . appears to be incredible and made in bad faith.” Complainant adds that “[o]ne must presume that the DPNM is knowingly and willfully violating federal law . . . to conceal its . . . illegal actions from the citizens of New Mexico.” The knowing and willful standard requires knowledge that one is violating the law. *Federal Election Commission v. John A. Dramesi for Congress Committee*, 640 F. Supp. 985, 987 (D. N.J. 1986). A knowing and willful violation may be established “by proof that the defendant acted deliberately and with knowledge that the representation was false.” *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). An

¹ Complainant mistakenly cites to 2 U.S.C. § 434(a)(2)(A) as the relevant statutory provision. That provision, however, applies only to authorized committees of a candidate, rather than political party committees.

inference of knowing and willful may be drawn "from the defendant's elaborate scheme for disguising" his or her actions. *Id.* at 214-15.

In his response to the Non-Filer Notice, Mr. Atcitty concedes that the DPNM's 1998 April Quarterly Report was not filed in a timely manner. Therefore, there is reason to believe that the Democratic Party of New Mexico and Thomas Atcitty, as treasurer, violated 2 U.S.C. § 434(a)(4)(A)(i). It does not appear that this failure to file was a knowing and willful violation of the Act. Mr. Atcitty became treasurer of the DPNM in May of 1997 and therefore had not filed quarterly reports for the DPNM in previous election years. Although the DPNM appears to have timely filed such reports in prior years, Mr. Atcitty's explanation for not filing the 1998 April Quarterly Report does not evince a deliberate intent to circumvent the Act's reporting requirements.

The regularly scheduled congressional primary election in New Mexico was held on June 2, 1998, followed by a special general election in the First Congressional District on June 23 to fill the vacant House seat of the late Congressman Steve Schiff. The DPNM filed a pre-election report for the special election, but did not file a pre-election report for the regularly scheduled primary election. However, the DPNM's pre-election report for the special election, covering the period from April 1, 1998 through June 3, 1998, did not disclose any "contribution to or expenditure on behalf of a candidate" in the primary election. *See* 2 U.S.C.

§ 434(a)(4)(A)(ii). Accordingly, the DPNM was not required to file a report for the primary election. *See* MURs 4549, 4558 (Democratic National Committee). Therefore, there is no reason to believe that the Democratic Party of New Mexico and Thomas Atcitty, as treasurer, violated 2 U.S.C. § 434(a)(4)(A)(ii).